

VERMONT LABOR RELATIONS BOARD

DEPARTMENT OF CORRECTIONS       )  
PERSONNEL DESIGNATION DISPUTES   )  
(re: Assistant Superintendents) )

DOCKET NO. 81-60

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

On October 9, 1981, the Vermont State Employees' Association ("VSEA") filed a petition with the Vermont Labor Relations Board, contending the designations of the five Correctional Facility Assistant Superintendents as "managerial" employees by the Department of Personnel should be changed to "supervisory".

A hearing was held before the full Board at the Board hearing room in Montpelier on May 6, 1982. Scott Cameron, Assistant Attorney General, represented the State. VSEA was represented by its attorney, Michael R. Zimmerman. No briefs were filed by the parties.

FINDINGS OF FACT

1. Five of the six State Correctional Facilities have Assistant Superintendents. Chittenden Community Correctional Center, St. Johnsbury Community Correctional Center, St. Albans Correctional Facility, Rutland Community Correctional Center, and Woodstock Community Correctional Center have Assistant Superintendents (Position Numbers: IN-0332, IN-0006, IN-0301, IN-0024, IN-0775). Windsor Residential Treatment Facility does not have an Assistant Superintendent.

2. Correctional Facilities are headed by a Superintendent. The Assistant Superintendent acts as Facility head in the absence of the Superintendent.

3. The activities of a Correctional Facility are divided into two major components: Security/Operations and Program Services. The Security/Operations function involves custody of inmates and provision of proper security for inmates, staff, and the public. Program Services is responsible for the delivery of a variety of educational, rehabilitative, and training programs for inmates (e.g. Vocational Training, Adult Basic Education, Medical Services, Resident Rehabilitation).

4. Assistant Superintendents have sole responsibility for one of the two major components. If the Superintendent has control of Security/Operations, the Assistant Superintendent has control of Program Services, and vice-versa.

5. Although the Superintendent has nominal control of the Facility, the Assistant Superintendent reports directly to the Deputy Commissioner in his area of responsibility, not the Superintendent.

6. The Department of Corrections attempts to hire Superintendents and Assistant Superintendents as a team. For example, if the Assistant Superintendent is knowledgeable in Security/Operations, then the Department will seek to hire a Program Services specialist as Assistant Superintendent.

#### OPINION

3 VSA §906 provides any disputes over designation of positions by the Commissioner of Personnel shall be finally resolved by the Board. Here, VSEA disputes the designations of Correctional Facility Assistant Superintendents as "managerial" employees, contending they are "supervisors".

3 VSA §902(18) defines "managerial employee" as:

...an individual finally determined by the Board as being in an exempt or classified position which requires him to function as an agency, department or institution head, a major program or division director, a major section chief or director of a district operation.

The State contends Assistant Superintendents are "major program directors" and substitute "institution heads". We reject the State's claim they are institution heads. An Assistant Superintendent does not acquire such status by reason of temporarily taking over the Superintendent's duties in his absence. cf. Firefighters of Brattleboro v. Brattleboro Fire Department, 138 Vt. 347 (1980).

However, we do believe they are major program directors. Central to the purpose of a Correctional Facility are both custodial and rehabilitative responsibilities. Any component of a Facility's operation addressing one of these two areas becomes a major program. The undisputed evidence indicates Assistant Superintendents have sole responsibility over such a program; directing either Program Services or Security/Operations in their facility. That Assistant Superintendents report directly to the Deputy Commissioner in their areas of responsibility indicates the lack of control Superintendents have in these areas.

As long as the Department of Corrections is organized in such a way that responsibility is given to Assistant Superintendents in one of these two major program areas, and the Superintendents have little authority over it, we regard the Assistant Superintendents as major program directors, and, thus, managerial employees.

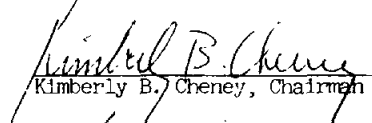
ORDER

Now, therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The designations of the Commissioner of Personnel making the five Assistant Superintendents of the State's Correctional Facilities managerial employees are AFFIRMED.

Dated this 3<sup>rd</sup> day of June, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Sr.

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James S. Gilson